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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,908	10/22/2003	Jennifer Hope Harris	Jenn003	6388
54279	7590	05/14/2008		
PAUL V. KELLER, LLC 4585 LIBERTY RD. SOUTH EUCLID, OH 44121			EXAMINER NGUYEN, THUY-VI THI	
			ART UNIT 3689	PAPER NUMBER
			MAIL DATE 05/14/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/690,908

**Applicant(s)**

HARRIS, JENNIFER HOPE

**Examiner**

THUY-VI NGUYEN

**Art Unit**

3689

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 07 April 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
see below.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

/Janice A. Mooneyham/  
Supervisory Patent Examiner, Art Unit 3689

The applicant has provided arguments after Final Rejection. The Examiner is considering the arguments as being a Request for Reconsideration. The Examiner has carefully considered the applicant's arguments but does not find them persuasive for the following reasons:

1. Claim 1 is interpreted to be directed to a method of providing a service, comprising providing a service that people can attend and offering persons who attend the service an opportunity to receive a reminder. As written, the fact that the service is a funeral service or that the information included in the reminder is non-functional descriptive data. Furthermore, the Examiner notes that many of the dependent claims are directed to providing the anniversary reminder and information provided in the reminder. However, the Examiner notes that there is no positive recitation of the persons attending the funeral actually electing to receive the reminder. All that the claim limitation requires is that a reminder be offered. For the anniversary reminder to be provided, there must be a positive recitation of the attendee selecting the reminder. Claim 8 states that the attendees elect to receive the reminder by marking a funeral register. However, there has been no actual positive step of an election being made. A method is directed to positive steps being performed. The applicant has stopped short of actually requiring an election to be made. All the limitation requires is that a service be provided that people attend and that those attended are offered an item/reminder which they can choose to receive or not.

The Examiner further asserts that Russell discloses that about 100 people attended a wake and/or funeral in which all received tribute cards which carried the MyEtribute.com logo and that mourners' visit MyEtribute website [0150-0151]. Russell also discloses that new card and flower offerings appear on MyEtribute.com [0155]. The inventive website, MyEtribute.com, features a wide variety of offerings to those mourning the passing of both human loved ones and pets [0217]. Other customized offerings of the tribute web site include, for example, Anniversary Reminders [0229]. Thus, the Examiner asserts that Russell discloses "providing a service that persons attend and offering persons who attend the service tribute cards which carry the MyEtribute.com logo. The MyEtribute.com website offers the persons who attended the funeral the election to receive an anniversary reminder.

As for applicant's assertion that the Office Action is unclear, the Examiner asserts that the applicant's claim limitations are also unclear. It appears from applicant's arguments that applicant is intending for the step of "offering persons selected based on their attendance of the service an election to receive the reminder" to occur while physically present at the funeral. However, the Examiner asserts that the claim limitations do not require such a narrow interpretation. The offering can be at anytime. This is further evidenced by claim 7 which states that "wherein the opportunity to elect to receive the reminder is given at the service". A broad, yet reasonable, interpretation of the claim limitation just requires that those who attend the service be offered an opportunity to receive a reminder. Russell provides such persons such an opportunity by providing those attending the funeral a tribute card with the logo for MyEtribute.com on it wherein MyEtribute.com provides an opportunity to receive a reminder.

Thus, contrary to applicant's arguments, the Examiner asserts that Russell discloses providing a funeral and providing an offer to be made to persons selected based on their attendance.

As for applicant's definition as to what a funeral service is, the Examiner asserts that the broadest reasonable interpretation can be any service/ceremony marking a person's death.

The Examiner asserts, that the claim limitations, as written, would allow for the funeral service to be a service in which the persons physically attended or a virtual service in which the persons attended by electronic means. It is unclear to the Examiner how either would alter the steps of providing a service or offering an election to receive a reminder.

The limitations stating that the reminder is a reminder to contact the bereaved, that the reminder includes suggestions for what to write in a note, that the reminder includes guidelines, that the reminder includes the date of the funeral, that the reminder includes a brochure, etc., is non-functional descriptive data. When presented with a claim comprising descriptive material, an Examiner must determine whether the claimed nonfunctional descriptive material should be given patentable weight. The Patent and Trademark Office (PTO) must consider all claim limitations when determining patentability of an invention over the prior art. In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401,404 (Fed. Cir. 1983). The PTO may not disregard claim limitations comprised of printed matter. See Gulack, 703 F.2d at 1384-85, 217 USPQ at 403; see also Diamond v. Diehr, 450 U.S. 175, 191, 209 USPQ 1, 10 (1981). However, the examiner need not give patentable weight to descriptive material absent a new and unobvious functional relationship between the descriptive material and the substrate. See In re Lowry, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994); In re Ngai, 367 F.3d 1336, 1338, 70 USPQ2d 1862, 1863-64 (Fed. Cir. 2004). Thus, when the prior art describes all the claimed structural and functional relationships between the descriptive material and the substrate, but the prior art describes a different descriptive material than the claim, then the descriptive material is nonfunctional and will not be given any patentable weight. That is, such a scenario presents no new and unobvious functional relationship between the descriptive material and the substrate. The Examiner asserts that the data provided with the reminder adds little, if anything, to the claimed acts or steps and thus does not serve as limitations on the claims to distinguish over the prior art. MPEP 2106IV b 1(b) indicates that "nonfunctional descriptive material" is material "that cannot exhibit any functional interrelationship with the way the steps are performed". Any differences related merely to the meaning and information conveyed through data which does not explicitly alter or impact the steps is non-functional descriptive data. Except for the meaning to the human mind, the data contained on the reminder does not functionally relate to the substrate and thus does not change the steps of the method as claimed.

MyEtribute.com combines, among other activities, tributes, messages, shopping, into a single one-stop web site [0107]. Thus, by allowing persons to purchase flowers as well as offering these persons an opportunity to elect to receive a reminder, Russell meets the claim limitations. Russell further discloses a guest book which the Examiner asserts would be a list of attendees.

As for claim 17, the claim is directed to a display. A display is printed matter which is non-statutory. Furthermore, Russell discloses a guest book which the Examiner asserts is a registry. The instruction on a display are again determined to be non-functional descriptive data. If

applicant is considering a display to be an apparatus, the instructions would not change the structure of the apparatus. Applicant needs to more clearly define what applicant means by a display. A funeral registry is a book. Thus, the data in the book does is given little patentable weight. Applicant is directed to see the USPTO website where informative opinions from the Board are displayed. In re Curry and In re Mathias give good discussions on non-functional descriptive data.

As for claim 9, the Examiner directs the applicant to the discussion above as to claim 1. The fact that all who attended the received tribute cards with the MyEtribute.com logo again provides the attendees with an opportunity to receive a reminder and further can be interpreted as a form of advertising the website.

Examiner cites particular columns and line numbers in the references as applied to the claims for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that, in preparing responses, the applicant fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.